



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

---

In the Matter of Claims Against the Dealer Bond  
of ERM Enterprises Corp., d/b/a Commercial  
Street Auto Sales

Case No: DOT-16-0088

---

**FINAL DECISION**

On October 10, 2016, Michelle Ciske filed a claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of ERM Enterprises Corp. d/b/a Commercial Street Auto Sales, (Dealer). Pursuant to the procedures set forth at Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims was published in The Post Crescent, a newspaper published in Appleton, Wisconsin. The notice informed other persons who may have claims against the Dealer to file them with the Department by January 17, 2017. No additional claims were filed. Michelle Ciske's claim was forwarded by the Department to the Division of Hearings and Appeals. The Administrative Law Judge issued a Preliminary Determination in this matter on March 9, 2017. No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d), the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Michelle Ciske  
W6150 County Road BB, Lot 76  
Appleton, WI 54914

ERM Enterprises Corp., dba Commercial Street Auto Sales  
912 South Commercial Street  
Neenah, WI 54956-3804

American Contractors Indemnity Company  
601 South Figueroa Street, Suite 1600  
Los Angeles, CA 90017

**Findings of Fact**

1. ERM Enterprises Corp. d/b/a Commercial Street Auto Sales (Dealer) is licensed by the Wisconsin Department of Transportation (Department) as a motor vehicle dealer. The Dealer's facilities are located at 912 South Commercial Street, Neenah, Wisconsin.

2. The Dealer has had a bond in force satisfying the requirements of Wis. Stat. § 218.0114(5) since January 2, 2015 (Bond # 100265532 from American Contractors Indemnity Company).

3. On June 10, 2015, Michelle Ciske (Ciske) purchased a 2002 Chevrolet Trailblazer, vehicle identification number 1GNET16S526101201, from the Dealer. According to the purchase contract, Ciske paid \$4,909.50, including taxes and registration fees, for the vehicle. The Wisconsin Buyers Guide displayed on the vehicle at the time it was offered for sale by the Dealer indicated no problems with the vehicle and that all equipment was legal.

3. In June of 2016, Ciske took the vehicle to Reflections Truck Service, LLC, to have the ball joints replaced. A mechanic at Reflections Truck Service, LLC, inspected the vehicle and discovered that the frame was nearly rusted through in two spots and a third spot on the frame had corrective welds. The mechanic advised that the vehicle was not safe to drive. In the mechanic's opinion the extent of the rust on the frame could not have occurred in the time Ciske owned the vehicle. The corrective welds were not done while Ciske owned the vehicle.

4. On June 9, 2016, Ciske filed a complaint with the Department's Dealer Section against the Dealer. The investigator assigned to the complaint contacted the Dealer and negotiated a settlement on behalf of Ciske. According to the settlement, the Dealer agreed to reframe the vehicle. Ciske delivered the vehicle to the Dealer to have it reframed; however, the Dealer backed out of the settlement.

5. On October 10, 2016, Ciske filed a claim against the surety bond of the Dealer. The claim is in the amount of \$4,909.50, the original purchase price of the vehicle. Pursuant to Wis. Admin. Code § 139.04(4), Dealers are required to disclose on a Wisconsin Buyers Guide any damage and evidence of repair to a vehicle's strut tower, trunk, floor pan, frame or structural portion of unibody that can be discovered during a presale inspection using reasonable care. Based on the opinion of the mechanic from Reflections Truck Service, LLC, and photographs taken by Department's investigator, the extent of the frame rust present on the vehicle purchased by Ciske in June of 2016, it is likely that the Dealer should have discovered the frame rust during a reasonable presale inspection of the vehicle. Additionally, the Dealer was also required to disclose the existence of the corrective welds on the Wisconsin Buyers Guide.

6. The Dealer's failure to disclose the presence of frame rust and corrective welds on the Wisconsin Buyers Guide displayed on the vehicle at the time it was offered for sale constitutes a violation of Wis. Admin. Code § Trans 139.04(4). The appropriate remedy for this violation is to award Ciske the cost of repairing the undisclosed frame damage. There is no evidence in the record of the cost of reframing the vehicle. The Dealer was given an opportunity to reframe the vehicle, but failed to do so. A reasonable conclusion to draw from the Dealer's failure to follow through on the settlement agreement is that the cost of reframing the vehicle exceeds its value. Accordingly, a reasonable alternative remedy in this matter is to rescind the transaction.

7. Ciske filed a bond claim within three years of the ending date of the period the American Contractors Indemnity Company bond was in effect and it is, therefore, a timely claim. Ciske sustained a loss as a result of the Dealer's violation of Wis. Admin. Code § Trans 139.04(4). The loss sustained by Ciske was caused by an act of the Dealer that would be grounds for the suspension or revocation of his motor vehicle dealer license. Accordingly, the claim is allowable. Ciske supplied documentation to support a claim in the amount of \$4,909.50, the purchase price of the vehicle.

### DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

- (a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.
- (b) The claim arose during the period covered by the security.
- (c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:

1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.0116(1)(a) to (gm), (im) 2., (j), (jm), (k), (m) or (n) to (p), Stats.

. . . . .

- (d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Accordingly, to allow the claim filed against the surety bond of the Dealer, a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1) identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. With respect to Ciske's claim, the Dealer violated Wis. Admin. Code § Trans 139.04(4). A violation of Wis. Admin Code § Trans 139.04(4), in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm) (having violated any law relating to the sale, lease, distribution, or financing of motor vehicles). Wis. Stat. § 218.0116(1)(gm) is listed in Wis. Admin. Code § Trans 140.21(1)(c)1 as one of the violations upon which a claim against a motor vehicle dealer's bond can be based. Ciske sustained a loss as a result of this violation.

### CONCLUSIONS OF LAW

1. Michelle Ciske's claim arose on June 15, 2015, the day she purchased the vehicle from the Dealer. The surety bond issued to the Dealer by American Contractors Indemnity Company covers a one-year period commencing on January 2, 2015. The claim arose during the period covered by the surety bond.

2. Michelle Ciske filed a claim against the motor vehicle dealer bond of the Dealer on October 10, 2016. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code § Trans 140.21(1)(d), the claim is timely.

3. Michelle Ciske sustained a loss as the result of an act of the Dealer that would be grounds for the suspension or revocation of the Dealer's motor vehicle dealer license. Ms. Ciske has submitted documentation to support a claim in the amount of \$4,909.50. Because she is being reimbursed the purchase price of the vehicle as a result of the Dealer's actions, it would constitute unjust enrichment to allow Ms. Ciske to also retain ownership of the vehicle. Accordingly, she will be required to surrender the vehicle to American Contractors Indemnity Company.

4. The Division of Hearings and Appeals has authority to issue the following order.

### ORDER

The claim filed by Michelle Ciske against the motor vehicle dealer bond of ERM Enterprises Corp. d/b/a Commercial Street Auto Sales, is APPROVED in the amount of \$4,909.50. American Contractors Indemnity Company shall pay Ms. Ciske this amount for her loss attributable to the actions of ERM Enterprises Corp. d/b/a Commercial Street Auto Sales. Upon receipt of the payment, Michelle Ciske shall surrender possession and title of the vehicle to American Contractors Indemnity Company.

Dated at Madison, Wisconsin on April 20, 2017.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705-5400  
Telephone: (608) 266-7709  
FAX: (608) 264-9885

By: \_\_\_\_\_  
Mark F. Kaiser  
Administrative Law Judge

## NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.

2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel  
4802 Sheboygan Avenue, Room 115B  
Wisconsin Department of Transportation  
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to insure strict compliance with all its requirements.